HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b)

Description of the case.

Criminal Appeal No. 734 of 2001
(Old No.117 of 1984)

Pyara Singh and two others ….Appellants.
Vs.
State of. ….Opp. Party.

~~Approved for reporting~~

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Not approved for reporting.

Date of decision 9th September 2004.

Initial of Judge

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

Criminal Appeal No. 734 of 2001
(Old No.117 of 1984)

1. Pyara Singh S/o Banta Singh,
2. Gurdeep Singh S/o Pyara Singh,
3. Smt. Chhinder Kaur W/o Pyara Singh (since deceased)
   All R/o village Malpuri,
   P.S. Jaspur, the then distt. Nainital. ….Appellants

Vs.

State of. ….Opp. Party.

Sri Dharam Veer, learned Senior Counsel assisted by
Sri. B.S. Parihar, Adv. for the appellants.
Sri Amit Bhatt, Addl. G.A. assisted by
Sri. P.S. Sone & Sri Lalit Verma, Addl. G.As. for the State.

Coram:-Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

Dated: Nainital September 9, 2004

(Delivered by Hon. B.C. Kandpal, J.)

This criminal appeal arises out against the judgment and order dated 5th January 1984 passed by II Addl. Sessions Judge, Nainital in Sessions Trial no. 62 of 1983 State vs. Pyara Singh and two others u/s 302/34 I.P.C. convicting the appellants Pyara Singh, Gurdeep Singh and Smt. Chhinder Kaur u/s 302/34 I.P.C. and sentencing them to life imprisonment.

Brief facts of the prosecution case, giving rise to the appeal, are that Banta Singh deceased had three sons, namely, Kartar Singh, Mukhtyar Singh and Pyara Singh. Pyara Singh is one of the accused/appellant in the present case, who, alongwith his son Gurdeep Singh and his wife Chhinder Kaur is alleged to have murdered his father Banta Singh.

One of the appellant, namely, Smt. Chhinder Kaur died during the pendency of the appeal, hence the appeal abates on her behalf, accordingly the present appeal on behalf of

appellant Pyara Singh and Gurdeep Singh is in existence and is being disposed of.

According to the first information report, Banta Singh was in possession of about 14 acres of land, which was being cultivated by his three sons including the appellant Pyara Singh. Deceased Banta Singh had two tube wells and one of the tube well was got made entered by appellant Pyara Singh in his name by fraud with the result the deceased Banta Singh was annoyed with him and he executed a will pertaining to his entire property in the names of other two sons, namely, Kartar Singh and Mukhtyar Singh.

On account of execution of the aforesaid Will, Pyara Singh-appellant started having ill will with his father Banta Singh. One day before the incident, the deceased Banta Singh asked the complainant Mukhtyar Singh and another son Kartar Singh to get the sale-deed executed in their favour with respect to the land measuring 14 acres. This fact, somehow, was disclosed to Pyara Singh-appellant and on the date of incident i.e. on 26.09.1982, when Kartar Singh, brother of the complainant had gone to Jaspur for his personal work, and the complainant himself went to the jungle leaving deceased Banta Singh at his house, at about 7:00 a.m. Banta Singh went to the tube well of Pyara Singh and asked to provide water from the tube well in order to irrigate his paddy fields. Appellant Pyara Singh denied to do so and on this, deceased Banta Singh replied as to either provide him water or otherwise tomorrow the sale-deed shall be executed in favour of Kartar Singh and Mukhtyar Singh. Upon hearing this, the appellant Pyara Singh felt ill and replied that he will not look forward for tomorrow and finish the matter today. Saying this, the appellants Pyara Singh, Gurdeep Singh S/o Pyara Singh immediately assaulted the deceased Banta Singh by BALLAM and PHARSI. Banta Singh

fell on earth and Smt. Chhinder Kaur W/o Pyara Singh thereafter, caught hold the feel of the deceased and the other two accused/appellants assaulted him causing injuries on his person, which ultimately resulted his death.

The incident was witnesses by Smt. Gurdeo Kaur W/o the deceased Banta Singh , Smt. Charan Kaur daughter-in-law of the deceased and Km. Rani niece of the complainant Mukhtyar Singh, Massa Singh nephew of the complainant as well as small children of the family. All the eye-witnesses assembled at the spot raised alarm and on hearing hue and cry, the complainant Mukhtyar Singh arrived at the spot. The assailants made their escape good, as they fled away towards the jungle. By the time the complainant Mukhtyar Singh reached the spot, Banta Singh had already succumbed to the injuries. The entire incident was told to the complainant by the ladies and the children of the family. Leaving the dead body at the spot, the complainant Mukhtyar Singh proceeded immediately for lodging the first information report at the police station and the report of this incident was lodged by him at police station Jaspur at 8:45 am.

The investigation of the case was entrusted to S.I. Ajay Pal Singh who was posted as Station House Officer, Jaspur at the relevant time. He recorded the statement of Mukhtyar Singh, complainant and then held inquest on the body of the deceased Banta Singh in the presence of PANCHAS, vide inquest report Ext. Ka-2 on the record. This inquest report was prepared by S.I. Shafiq Khan on the dictation of the I.O. Ajay Pal Singh.

After the preparation of the inquest report, the dead body was sent to Civil Hospital, Haldwani for autopsy through the police constables. The Investigating Officer also recovered the broken PHARSI from the spot and prepared the memo in this

regard. The Investigating Officer also collected the bloodstained and simple earth from the place of occurrence and prepared the memo in this regard.

On 27th September 1982 at 11:00 a.m., the autopsy on the body of the deceased Banta Singh was conducted by Dr. M.S. Laspal. The doctor found the following ante mortem injuries on the person of the deceased:-

1. Incised wound 16cm. x4cm. one deed into right side of neck obliquely cutting with lobule of right ear and blood vessels, muscles, and fracture of right side mandible and parietal bone.
2. Lacerated wound linear 11cm x ½ cm. on skin deep into right side of shoulder 6cm. below injury number 1.
3. Contused abraded at the tip of right shoulder.
4. Lacerated wound 3cm. x 2cm. muscle deep right side of forehead.
5. Contusion 3cm. x 2cm. right side of forearm 3cm. lateral to injury no. 4.
6. Abraded contusion area 8cm. x 5cm. left side of forehead.
7. Abrasion area 2cm. x 2cm. left side of cheek.
8. Lacerated wound linear 6cm. x ½ cm. muscle deep right forearm 15cm. above right elbow joint.
9. Punctured wound 1cm. x 1cm. averted margin right side of chest in 8th & 9th ribs deep into pleura 7cm. below right nipple.
10. Punctured wound area 3cm. x 2cm. on deep into abdominal cavity right side of abdomen which punctured right lobe of lever. Blood is collected in abdominal cavity.
11. Linear contusion 11cm. x 2cm. right side of abdomen.
12. Lacerated wound 2cm. x 1cm. muscle deep mid of left thigh.
13. Lacerated wound 6cm. x 3cm. muscle deep left thigh 11cm. above left knee joint.

The doctor prepared the postmortem report in his writing and opined that the incised wound could be caused by PHARSI and punctured wound could be caused by spear while the lacerated wounds could be caused by blunt object like LATHI/ DANDA.

The Investigating Officer prepared the site plan pertaining to the place of occurrence and thereafter recorded the statements of the eye-witnesses.

The Investigating Officer arrested the accused Pyara Singh, Gurdeep Singh and Smt. Chhinder Kaur on the same day. The Investigating Officer during the interrogation; came to know that Pyara Singh had concealed the BALLAM and he could recover it. The appellant Pyara Singh led the Investigating Officer and the eye-witness Singhara Singh (P.W.5) to the field of Harjinder Singh and got the bloodstained BALLAM recovered out of the bushes standing northeastern corner of the field. The recovery memo was prepared by the Investigating Officer in this regard.

After completion of the investigation, the Investigating Officer submitted the charge sheet against the accused persons. Subsequently, report of the Chemical Examiner was also submitted by the Investigating Officer before the Court.

After submission of the charge sheet, the appellants were committed to the Court of Sessions in order to face their trial. The learned Trial Court, vide its order dated 16.06.1983,framed the charge u/s 302/34 I.P.C. against the accused Pyara Singh, Gurdeep Singh and Smt. Chhinder Kaur. All the accused denied of the charge leveled against them and claimed their trial.

The prosecution, in order to support its case, produced P.W.1 Mukhtyar Singh, P.W.2 Charan Kaur, P.W.3 Smt. Gurudeo Kaur, P.W.4 Malook Singh, P.W.5 Singhara Singh, P.W.6 Head Constable Harpal Singh, P.W.7 Dr. M.S. Laspal, P.W.8 S.I. Ajay Pal Singh (I.O.) and P.W.9 Constable Soorat Singh.

After the evidence of the prosecution was over, the statement of the accused were recorded u/s 313 Cr.P.C. The accused did not adduce any evidence in their defence.

The learned Trial Court, after hearing the learned counsel for the parties and having perused the entire evidence on record was pleased to convict the accused persons u/s 302/34 I.P.C. and sentenced them to life imprisonment, vide judgment and order dated 5th January 1984.

Feeling aggrieved by the aforesaid impugned judgment and order, the convicts preferred appeal before the Hon'ble High Court Allahabad which has been transferred to this Court for disposal after creation of the State.

As we have already observed above that one of the appellant, namely, Smt. Chhinder Kaur has died during the pendency of the appeal, as such, the appeal is abated on her behalf.

We have heard the learned counsel for the appellants Pyara Singh and Gurdeep Singh as well as learned Addl. G.A. for the State and perused the record.

Learned counsel for the appellant has first of all, argued that the first information report in the present case is ante timed. Our attention has been drawn towards the inquest report and it has been submitted that the weapons of assault are changed in the inquest report. It has also been submitted that the inquest was started at 10:15 a.m. on 26.09.1982 and it concluded at 13 hrs. It has also been submitted that the overwriting on the time also indicates that upto the conclusion of the inquest, the names of the accused and the manner of the incident was not disclosed to anyone.

Learned counsel for the appellants has also argued that in the first information report, the weapons of assault have been mentioned as "BALLAM" and "PHARSI", while in the inquest

report the weapons of assault have been mentioned as "GANDANSI" and "BHALA", therefore, these all facts clearly indicates that the first information report was not in existence at the time of the inquest and under these circumstances, the first information report is ante timed.

We do not find ourselves in agreement with the argument advanced by the learned counsel for the appellant in this regard. The incident is alleged to have been taken place on 26.09.1982 at 7:00 a.m., the first information report at the police station was lodged by informant Mukhtyar Singh at 8:45 a.m.; the distance of the police station from the place of occurrence is about 6 k.ms. Therefore, under these circumstances, the first information report cannot be said to be delayed. The overwriting on the words '6:00 a.m.' does not make the prosecution case doubtful. It can be by some inadvertence, that the word '6:00' might have been mentioned and thereafter corrected as '7:00'. The Investigating Officer Ajay Pal Singh (P.W.8) has deposed that the inquest report was prepared on his dictation by S.I. Shafiq Khan who was under training. The Investigating Officer has clarified the overwriting in his cross examination, as he has deposed that the same was on account of inadvertent mistake.

The argument advanced by the learned counsel for the appellant pertaining to this aspect that the weapons of assault have been mentioned as "GANDANSA" and "BHALA" in the inquest report which are the changed weapons as has been mentioned in the first information report, appears to be fallacious. Both the weapons mentioned in the first information report as well as in the inquest report are the same. Malook Singh (P.W.4) is a witness of the inquest. He has deposed in his cross examination that "FARSA" and "GADANSI" are the same thing. Likewise, Charan Kaur P.W.2 has also deposed in

her evidence that “GANDANSI” and “PHARSI” are the same thing. We therefore, do not find any iota of evidence on the record which may suggest that the first information report can be treated to be ante timed.

Learned counsel for the appellant has further argued that the motive to murder Banta Singh was not available to the appellants. It has been submitted that the motive was rather strong with complainant Mukhtyar Singh and his brother Kartar Singh to falsely implicated the appellants in the present crime, as by the murder of Banta Singh, the appellant Pyara Singh would not be getting anything in the property while Kartar Singh and Mukhtyar Singh are certainly beneficiaries.

Again the argument advanced before us appears to be without force. In a criminal case, the motive firstly, does not play any important role, secondly, if for the sake of argument it is presumed that the motive was not available to the appellants even then the prosecution case cannot be discarded merely on this count only. The evidence on record clearly reveals that it was the appellant Pyara Singh who had grudge against his father deceased Banta Singh, as Banta Singh who not having good relations with Pyara Singh and was annoyed with him. It further appears from the evidence that deceased Banta Singh also decided to execute deed with regard to the land measuring 14 acres in favour of his remaining two sons i.e. Kartar Singh and Mukhtyar Singh. There is a clear recital in the first information report that when Banta Singh asked appellant Pyara Singh that, in case, if he does not permit to take water from the tube well in order to irrigate the field then tomorrow he will execute the deed in favour of remaining two sons i.e. Kartar Singh and Mukhtyar Singh, on this the appellant Pyara Singh became furious and asked Banta Singh that he would not wait for tomorrow and finish the matter immediately.

Thereafter, the appellant, alongwith his son and wife assaulted at Banta Singh causing injuries on his person with the respective weapons which resulted death of Banta Singh at the spot.

Learned counsel for the appellant has further argued that in this case the eye witnesses produced by the prosecution had no chance to see the actual occurrence. Our attention has been invited towards the deposition of the eye witnesses produced by the prosecution in this regard.

As far as the evidence of P.W.1 Mukhtyar Singh is concerned, it reveals that he has narrated the entire case in his deposition but the thorough scrutiny of his deposition shows that he is not an eye witness of the MARPIT. This witness claims that he had seen the appellants running away towards the jungle after committing murder of his father and he reached at the spot after hearing the cries of his mother and BHABHI. Perusal of the deposition shows that his witness did not have any opportunity to reach the place of occurrence before the disappearance of the appellants from the spot. He also did not have any chance to hear the hue and cry of his mother and BHABHI because in his statement on oath, he admitted that the jungle, where he had gone to take the grass, is situate for about 2 kms. From his house. This witness although has tried to improve his deposition by saying that he had gone to take the grass on his field which is at a distance of one furlong from his house. But perusal of the first information report clearly shows that Mukhtyar Singh P.W.1 (complainant) had gone to jungle to take grass at the time of the occurrence, therefore, the evidence of this witness pertaining to the fact of occurrence appears to be an after thought and is not believable.

Further, the statement of Smt. Charan Kaur P.W.2, who is wife of Kartar Singh (daughter-in-law of the deceased) shows

that she is an eye witness of the occurrence. Smt. Charan Kaur in her statement has deposed that when her father-in-law Banta Singh had gone to Pyara Singh for asking water from the tube well, then at that time she was taking her tea inside the house. She has also stated that she from inside the house, heard her father-in-law asking about the water to Pyara Singh. This witness has further stated that when her father-in-law was assaulted by the appellants then she saw from her house and raised hue and cry. The site plan shows that the house of Kartar Singh is within the same campus where deceased Banta Singh and appellants reside. Appellant Pyara Singh is the son of deceased Banta Singh, while Kartar Singh and Mukhtyar Singh are also sons of deceased Banta Singh and all of them reside in the same campus, therefore, there cannot be any doubt with regard to this fact that Charan Kaur P.W.2 had certainly witnessed the incident. It is the human nature that when a person sitting inside a house, hears any hue and cry from outside the house, then certainly he will not keep himself sitting on the same posture. The person on hearing hue and cry, will certainly try to gather information as to what is the reason for that hue and cry. The appellant Pyara Singh is not unknown to Smt. Charan Kaur P.W.2 as she is the BHABHI of the appellant Pyara Singh, therefore, the version of this witness appears to be quite natural that she heard taking Banta Singh and Pyara Singh from inside the house and when the assault was made upon Banta Singh by the appellants then she was the incident.

Likewise the deposition of Smt. Gurudeo Kaur P.W.3, who is the wife of deceased Banta Singh, reveals that at the time of the occurrence she was cleaning the utensils as she has stated that when the children raised hue and cry then she came out rapidly and saw that appellant Pyara Singh was assaulting at

Banta Singh with spear, while Gurdeep Singh with "GANDANSI". The conduct of this witness appears to be natural, as she is the wife of deceased Banta Singh and she heard hue and cry from inside the house and certainly she might have run towards the outer portion of the house in order to see as to what had happened. This witness is the mother of appellant Pyara Singh and wife of deceased Banta Singh, therefore, there is no reason available to this witness of falsely implicate the appellant in this case. This witness has also deposed that she narrated the entire version to her son Mukhtyar Singh when he subsequently reached at the place of occurrence. this witness also resides in the same premises, therefore, there is every possibility available to this witness to see the entire incident and it cannot be gathered by any iota of evidence available on record that the witness has no occasion to see the actual occurrence.

Learned counsel for the appellant has cited before us AIR 2001 (S.C.), page 2434 State of Rajasthan vs. Mani Ram. We have gone through the decision cited before us and we are of the opinion that this decision does not apply to the facts and circumstances of the present case. The facts in the cited decision were that the Court disbelieved the testimony of the interested and related witness on the ground of his conduct as he did not make any attempt to save the life of his grand mother with whom he was living at the time of the occurrence. The facts in the present case are absolutely different. The witnesses are firstly, ladies and certainly they must be frightened due to sudden attack and normally the appellants were healthier than these witnesses. Further, the witnesses produced by the prosecution could not imagine as to appellant Pyara Singh with his son and wife would cause murderous assault at Banta Singh.

Hon'ble Supreme Court in a decision reported in (2004) 1 S.C.C., page 113 Prem Sagar vs. Dharam Veer and other has clearly observed that in case if the eye witnesses are related to the deceased as well as to the accused, then in such case, there was no reason as to why the witnesses would falsely implicate the accused/appellants. In the instant case, added to the observation made by the Apex Court, that in spite of the elaborate cross-examination nothing fragile in the testimony of the witnesses has surfaced. Their evidence appears to be cogent, truthful and trustworthy.

Learned counsel for the appellants has further argued that the ocular and medical version advanced by the prosecution in the present case have serious infirmity and on this count, the prosecution story becomes doubtful.

Our attention has been drawn towards the postmortem report of Banta Singh and it has been submitted that in case if the assault on the person of Banta Singh was made by the appellant with the 'Spear' and the "PHARSI" then there would not have been any occasion for the lacerated wounds on the body of the deceased. It has also been submitted that the witnesses produced by the prosecution are highly interested and related witnesses, therefore, their testimony cannot be said to be reliable and trustworthy.

Perusal of the evidence of Smt. Charan Kaur P.W.2 clearly shows that when Gurdeep Singh appellant assaulted with "GANDANSA" then during the course of the assault, handle of "GANDANSA" was broken. It has also been stated that the appellant Gurdeep Singh also assaulted at Banta Singh after the "PHARSI/GANDANSA" was broken. Therefore, lacerated wounds found on the person of deceased Banta Singh must have been caused by the blunt weapon because of the reason that Gurdeep Singh has assaulted the deceased by the wooden

handle of the PHARSI i.e. a blunt weapon after the same was broken.

Likewise Smt. Gurudeo Kaur P.W.3 wife of the deceased Banta Singh and mother of appellant Pyara Singh has deposed that Gurdeep Singh assaulted continuously with GANDANSI and during the course of the assault, the GANDANSI was broken and after the same was broken, the appellant Gurdeep Singh assaulted the deceased by the wooden handle of GANDANSI.

Dr. M.S. Laspal P.W.7 had also specifically stated that the injuries of the deceased could possibly be inflicted by PHARSI and BALLAM. The doctor has also deposed that the lacerated wound could have been caused by the blunt weapon like DANDA. Therefore, we do not find any infirmity in the ocular and medical version advanced by the prosecution.

Further, learned counsel for the appellants has tried to submit that in view of the medical evidence, time of the occurrence becomes doubtful. It has been submitted that the postmortem was conducted after 24 hrs. of the incident and the doctor found rigor mortis present in the dead body. But the doctor admitted in the cross examination that the rigor mortis started diminish after 18 hrs. of the death in the month of September, therefore, presence of rigor mortis in the body of the deceased at the time of the postmortem makes the time of occurrence of the alleged incident, doubtful.

We do not find ourselves in agreement with this argument because of the reason that there is nothing in the statement of the doctor that the rigor mortis in the dead body was completely disappeared after 24 to 28 hrs of the death. The medical version further finds strength in view of the deposition of the doctor that the injuries caused on the person of the

deceased could have been inflicted by the weapons used by the appellant during the course of the occurrence.

The learned counsel for the appellant has further submitted that the recovery of the spear, which is allegedly used in the occurrence, is doubtful.

The assessment of the evidence available on record show that Smt. Charan Kaur P.W.2 has stated that after assaulting Banta Singh, the appellants ran away towards the CHAQ Road, while Mukhtyar Singh P.W.1 has stated that the appellants fled away towards the jungle. The statement of P.W.5 Singhara Singh is relevant, as he is the witness in whose presence; the spear was recovered from the field of Harjinder Singh at the pointing out of the appellant Pyara Singh. This witness has deposed that when Pyara Singh was arrested by the police then he took the police from their way and the spear was recovered. He has also stated that the spear was bloodstained. Nothing has been elicited in the cross examination of this witness which may suggest that this witness is telling lie. Likewise P.W. 8 S.I. Ajay Pal Singh who is the investigating officer has also deposed that the spear was recovered from the field of Harjinder Singh on the pointing out of the appellant Pyara Singh. This bloodstained spear was recovered from amidst the bushes on the corner of the field.

The report of the chemical examiner, which is available as Ext. Ka-19 on the record, clearly shows that the human blood was found on the spear. It is also noteworthy to mention here that the broken PHARSI was also recovered from the place of the occurrence near the dead body and this PHARSI was also sent for chemical examination. The report shows that there was human blood on this PHARSI also. Therefore, recovery of the bloodstained spear on the pointing out of the appellant Pyara Singh as well as human blood found over the same and the

PHARSI recovered at the spot lying near the dead body as well as human blood found on it clear strengthen the prosecution case and it leaves no doubt to reach to a definite conclusion that the PHARSI and BALLAM recovered in the present case are the weapon which were used in the commission of crime.

Lastly, the learned counsel for the appellants has submitted that the place of occurrence in the instant case appears to be doubtful as the prosecution has totally failed to establish the exact place of occurrence by any evidence on record.

In reference to the aforesaid argument, perusal of the site plan would be material in which point 'A' has been shown to be the place of the occurrence and the place where the dead body was found by the Investigating Officer. Point 'A' lies near a KHOR towards west of tube well of Pyara Singh and east of house of Mukhtyar Singh and this open piece of land belongs to Mukhtyar Singh as his AANGAN. There is no evidence that this place 'A' is not the part of AAGAN of Mukhtyar Singh. The distance between the tube well of Pyara Singh and place 'A' is very short as per the site plan.

It has come in the testimony of the all the eye witnesses that the MARPIT took place near the KHOR. Therefore, it cannot be accepted that the witnesses have stated a different place of incident than the one shown by the Investigating Officer in the site plan. We also do not find any substance in the argument advanced by the learned counsel for the appellants in this regard.

For the reasons stated above, we are of the opinion that there is no ground to interfere with the judgment and order passed by the learned Trial Court convicting the appellants.

We find ourselves in agreement with the view adopted by the Trial Court.

Accordingly, the appeal is dismissed. The conviction and the sentence passed by the Court below, vide impugned judgment and order is hereby confirmed.

The record of the court below be returned immediately & learned C.J.M. concerned is directed to take appropriate steps to take the appellants into custody in order to serve out the sentence imposed against them by the trial court.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

September 9, 2004:
NCM: